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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,905	04/14/2005	Aaldrik Engels	7392/84241	4422
42798	7590	04/07/2006	EXAMINER	
FITCH, EVEN, TABIN & FLANNERY P. O. BOX 65973 WASHINGTON, DC 20035			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/522,905	Applicant(s) ENGELS ET AL.	
	Examiner Adepeju Pearse	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-44 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 17-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: On pages 7 lines 20-24, the weight percent range "5,0 to 60,0" should be corrected to --5.0 to 60.0--. This change should be applied to all other weight percent ranges throughout the disclosure as appropriate. On page 2 line 12 "4.161.545" should be corrected to --4,161,545--. This change should be applied to all other patent numbers throughout the disclosure as appropriate

Appropriate correction is required.

Claim Objections

1. Claims 17 and 32 are objected to because of the following informalities: The word "of" between "is" and "from" should be removed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. ~~Claims 19 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals~~

Art Unit: 1761

and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 19 recites the broad recitation "dry food product being made of materials selected from the group consisting of cereals", and the claim also recites "preferably wheat and corn, potato and rice" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17-23, 25, 28, 32-36, 38 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Budd et al (U.S. Pat. No. 4,910,031). With regard to claim 17, Budd et al disclose a topped savory snack comprising applying a sugar-based binder as a coating over a previously topped snack food item to envelope the entire item and provide a protective barrier to further promote adhesion (col 2 lines 18-24). The composition is particularly effective in binding fat-based seasonings or toppings such as granules. The fat-based toppings and seasonings comprise

Art Unit: 1761

particulate solids dispersed in a water and oil emulsion (col 4 lines 45-54). It is well known in the art that granules typically have a size greater than 0.5mm as instantly claimed. The binder composition comprises 20 to 80% sugars and about 20 to 80% water (col 3 lines 9-11). Preferred sugars include maltodextrins and complex carbohydrates such as mono and polysaccharides having a degree of polymerization up to about 10 (col 3 lines 35-40, lines 42-44, example III). The coated food item is dried following application of the aqueous binder composition to remove excess moisture, which could otherwise adversely affect the texture, appearance and/or shelf life of the product (col 5 lines 25-28). The weight ratio of binder to co-binder would be an inherent experimentally result variable in order to achieve a ratio that would effectively reduce topping rub-off.

6. With regard to claims 18 and 33, Budd et al disclose that a topped savory snack comprising applying a sugar-based binder as a coating over a previously topped snack food item to envelope the entire item and provide a protective barrier to further promote adhesion (col 2 lines 18-24). It is inherent that the food product was dried prior to the addition of the binder composition in order to provide a complete protective barrier to further promote adhesion of the topping material.

7. With regard to claims 19-21, 28, 33-35 and 41, Budd et al disclose food products that are generally dry including potato chips, pretzels, chips, cheeses puffs, corn chips, etc (col 1 lines 42-50). It is inherent that the products have a water content of less than 5% by weight as instantly claimed because they are identical to the dry foods recited.

8. With regard to claims 22 and 36, Budd et al discloses extruded products such as cheese curls and corn chips (col 4 lines 35-38). Budd et al is silent as to deep-frying after extruding the

Art Unit: 1761

products. However, it is inherent that the products are deep fried after extruding because this process is well known in the art.

9. With regard to claims 25 and 38, Budd et al disclose polysaccharides as suitable components in the coating composition (col 3 lines 35-39). It is inherent that this is an edible polymer as instantly claimed because it is the same component.

10. With regard to claim 32, Budd et al disclose a topped savory snack comprising applying a sugar-based binder as a coating over a base portion and over which toppings are applied (col 2 lines 24-26). The composition is particularly effective in binding fat-based seasonings or toppings such as granules. The fat-based toppings and seasonings comprise particulate solids dispersed in a water and oil emulsion (col 4 lines 45-54). It is well known in the art that granules typically have a size greater than 0.5mm as instantly claimed. The binder composition comprises 20 to 80% sugars and about 20 to 80% water (col 3 lines 9-11). Preferred sugars include maltodextrins and complex carbohydrates such as mono and polysaccharides having a degree of polymerization up to about 10 (col 3 lines 35-40, lines 42-44, example III). The coated food item is dried following application of the aqueous binder composition to remove excess moisture, which could otherwise adversely affect the texture, appearance and/or shelf life of the product (col 5 lines 25-28). The weight ratio of binder to co-binder would be an inherent experimentally result variable in order to achieve a ratio that would effectively reduce topping rub-off.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 24, 26-27, 29-31, 37, 39-40, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budd et al in view of Luft (U.S. Pat. No. 3,830,941), Keller et al (U.S. Pat. No. 4,880,653) and Kitano et al (U.S. Pat. No. 6,902,752). With regard to claims 24 and 37, Budd et al failed to disclose the oil or fat as edible and vegetable based. However, Luft et al teach a food coating composition comprising an oil component. The oil is an edible food grade hydrogenated animal fat or hydrogenated vegetable oil (col 2 lines 15-28). It would have been

Art Unit: 1761

obvious to one of ordinary skill in the art to modify Budd et al with Luft et al by utilizing an edible vegetable oil or fat as a component in the coating composition for the same function.

15. With regard to claims 26 and 39, Budd et al disclose that the fat-based toppings and seasonings often contain particulate solids dispersed in a water and oil emulsion. The fat content varies from 10 to 70%, which is within applicant's recited range. However, Budd et al failed to disclose the range for the topping component. Kitano et al teach coatings for bakery or confectionery use comprising a topping having a particle size greater than 50 μ m at a range from 25 to 75% by weight (col 3 lines 31-38). This range is within applicant's recited range. It would have been obvious to one of ordinary skill in the art to modify Budd et al with the teachings of Kitano et al by utilizing toppings at the recited range for the same function.

16. With regard to claims 27 and 40, Budd et al disclose that sugars such as maltodextrin should be present from a range of 20 to 80% (col 3 lines 9-11) and that the coating composition may also contain simple and complex carbohydrates such as mono and polysaccharides (col 3 lines 35-40). In addition Budd et al also discloses that the sugar in the composition should be high enough so as to function effectively to bind together the topping and the base to effectively reduce topping rub-off. However, Budd et al failed to disclose the weight ratio of these components. It would have been obvious to one of ordinary skill in the art to expect that the weight ratios would be an experimentally result variable in order to achieve a ratio that would effectively reduce topping rub-off.

17. With regard to claims 29 and 42, Budd et al disclose that the fat-based toppings and seasonings comprise particulate solids dispersed in a water and oil emulsion (col 4 lines 45-54). It is well known in the art that granules typically have a size greater than 0.5mm as instantly

Art Unit: 1761

claimed. It would be obvious to one of ordinary skill in the art to expect that a granule would have a size greater than 1mm as instantly claimed. Kitano et al teach coatings for bakery or confectionery use comprising a topping having a particle size greater than 50µm or more and about 1mm or less (col 3 lines 31-38). It would have been obvious to one of ordinary skill in the art to modify Budd et al with the teachings of Kitano et al by utilizing toppings at the recited particle sizes in order to have a more effective visual appeal to the consumer.

18. With regard to claims 30-31 and 43-44, Budd et al failed to disclose adding a flavor enhancer to the mixture. However, Keller et al teach preparing pretzels and adding flavoring agents such as yeast (col 4 lines 64-67). It would be obvious to one of ordinary skill in the art to modify Budd et al with Keller et al by incorporating a flavoring agent such as yeast to improve the flavor of the final product.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art discloses applicable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 1761



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